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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,200	09/26/2003	Rita Parikh	26000	8943
29668	7590	03/17/2005	EXAMINER	
PFIZER, INC. 201 TABOR ROAD MORRIS PLAINS, NJ 07950			LE, HUYEN D	
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			3751	

DATE MAILED: 03/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No. 10/672,200	Applicant(s) PARIKH ET AL.	
	Examiner Huyen Le	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 January 2005.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 4, 5, 15 and 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-14, 16, 17, 19 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>09/26/2003</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

1. Applicant's election with traverse of species I, Figure 4, in the reply filed on 01/03/2005 is acknowledged. The traversal is on the grounds that all species are not independent because they do not lack commonality of design, operation or effect and all disclosed species having an abrasive applicator tip for cleaning teeth. This is not found persuasive because although all disclosed species have a common feature, such as a abrasive tip for cleaning, they are different in overall design and operation. For example, species I, Figure 4, has a gel substance 24 inside the tubular body 15 and toothpick 25. In order to release the oral care composition, the end 25 is broken off at the groove 30 from the body 15. Species II, Figure 5, has a capsule 75 storing oral care composition inside the tubular body 15 and a toothpick member 66 sealed off the body 15. In operation, a user needs to apply force to fracture the capsule 75 to release the composition to the applicator tip 64. The toothpick member 66 is not frangible. Lastly, species III, Figure 6, has a tubular body 82 for storing the oral care composition 86 and sealed at one end. The body 82 does not have a toothpick member, a capsule or gel substance. In operation, a user needs to apply pressure to the tubular body 82 to force the composition to the applicator tip 82.

The requirement is still deemed proper and is therefore made FINAL.

Currently, claims 1-3, 6-14, 16-17 and 19-20 are readable on elected species I. Claims 4, 5, 15 and 18 readable on the nonelected species, have been withdrawn from consideration.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 2, 10, 13-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Pavanelli (6,132,445).

The Pavanelli reference discloses an oral cleaning device (Fig. 3) comprising an elongated tubular shaft member 1 with an applicator tip member 2 positioned at one end, and an oral care composition inside the tubular shaft member 1 adapted to be released and passed into the applicator tip member 2, the tip member 2 having a plurality of protuberances 3 constituting an "abrasive surface".

Regarding claim 2, the applicator tip 2 has a wide edge and tapered towards to back constituting a "wedge" shape.

Regarding claim 10, the tubular shaft member 1 is made from a flexible material, wherein the oral care composition can be passed into the applicator member 2 by manually flexing and squeezing of the flexible material.

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Regarding claims 13-16, the method of using is inherently performed during the normal use of the cleaning device.

4. Claims 1, 3, 7-10, 13, 14, 17, 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Kenny et al (6,536,979).

The Kenny et al reference discloses an oral cleaning device comprising an elongated tubular shaft member 14 (or 114) with an applicator tip member 20 positioned at one end, and an oral care composition inside the tubular shaft member 14 adapted to be released and passed into the applicator tip member 20, the tip member 20 having bristles 26 constituting an "abrasive" surface.

Regarding claim 3, the applicator tip includes the bristles made of plastic constituting an abrasive material.

Regarding claim 7, the applicator comprises a pick member 74 positioned at the end of the tubular shaft member 14 opposite the applicator tip member 20.

Regarding claim 8, the pick member 74 is removable from the tubular shaft member.

Regarding claim 9, the applicator comprises grooves (between the threads 116 in Figure 5) in the tubular shaft member 14 (or 114) in order to facilitate removal (or attachment) of the pick member 74.

Regarding claim 10, the tubular shaft member 14 is made from a flexible material, wherein the oral care composition can be passed into the applicator member 20 by manually flexing and squeezing of the flexible material.

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Regarding claims 13, 14, 17, 19, the method of using is inherently performed during the normal used of the cleaning device.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pavanelli (6,132,445).

Although the Pavanelli reference does not specifically disclose that oral composition comprises an essential oil, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select an oral composition having oil, since selecting a known material on the basis of its suitability for the intended use is a mere matter of obvious design choice. In re Leshin, 125 USPQ 416.

7. Claim 12 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pavanelli (6,132,445) in view of Rimkus (5,967,152).

The Pavanelli reference discloses an oral cleaning device as described above. Although the Paveanlli reference does not disclose that the handle includes a gripping means, attention is directed to the Rimkus reference which discloses another oral cleaning device having gripping means 36,38 for facilitating holding the device in use.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide gripping means, such as a knurled portion or

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protrusion on the handle of Pavanelli device in view of the teaching Rimkus reference in order to facilitating handling the device.

8. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kenny et al (6,536,979)).

Although the Kenny reference does not specifically disclose that oral composition comprises an essential oil, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select an oral composition having oil, since selecting a known material on the basis of its suitability for the intended use is a mere matter of obvious design choice. In re Leshin, 125 USPQ 416.

9. Claims 12 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenny et al (6,536,979) in view of Cardarelli (6,070,286).

The Kenny et al reference discloses an oral cleaning device as described above. Although the Kenny et al reference does not disclose that the handle includes a gripping means, attention is directed to the Cardarelli reference which discloses another oral cleaning device having gripping means 3 on the handle 2 for facilitating holding the device in use.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide gripping means, such as a protrusions on the handle of Kenny et al device in view of the teaching Cardarelli reference in order to facilitating holding the device.

10. Claims 1, 3, 6, 10, 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon et al (4,415,288).

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The Gordon et al reference discloses a liquid applicator device comprising an elongated tubular shaft member 11 with an applicator tip member 10 positioned at one end, and an antiseptic solution inside the tubular shaft member 11 adapted to be released and passed into the applicator tip member 10, the tip member 10 having an abrasive surface (col. 4, lines 12-14).

Although the Gordon et al reference does not specifically disclose that the antiseptic solution includes an oral care composition, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ an oral care composition or other solutions, wherein so doing would be a matter of obvious design choice depending on a suitable intended use.

Regarding claim 6, the applicator comprises a second plugging material 18 preventing the composition from passing into the application tip member 10 until desired by the user.

Regarding claim 10, the tubular shaft member 11 is made from a flexible material, wherein the oral care composition can be passed into the applicator member 10 by manually flexing and squeezing of the flexible material.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Roberts, Jr. reference shows a dispensing device having an abrasive applicator member. The Barnett, Chari et al, Silverman and Blasius, Jr. et al shows oral hygiene devices having an applicator head at one end and a toothpick at the



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other end. The Copelan et al shows a dental hygiene device having an abrasive applicator member.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 571-272-4890.

The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Huyen Le  
Examiner  
Art Unit 3751

HL  
March 16, 2005